

REHEARING NOV 15 1999

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BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK
CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER

Arizona Corporation Commission

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ARIZONA CORPORATION COMMISSION
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IN THE MATTER OF THE APPLICATION) DOCKET NO. E-01345A-98-0473
OF ARIZONA PUBLIC SERVICE)
COMPANY FOR APPROVAL OF ITS)
PLAN FOR STRANDED COST)
RECOVERY.)

IN THE MATTER OF THE FILING OF) DOCKET NO. E-01345A-97-0773
ARIZONA PUBLIC SERVICE COMPANY)
OF UNBUNDLED TARIFFS PURSUANT)
TO A.A.C. R14-2-1601 *et seq.*)

IN THE MATTER OF COMPETITION IN) DOCKET NO. RE-00000C-94-0165
THE PROVISION OF ELECTRIC)
SERVICES THROUGHOUT THE STATE) APPLICATION FOR REHEARING
OF ARIZONA.)

Pursuant to A.R.S. § 40-253, the Arizona Consumers Council applies for rehearing of
Decision No. 61973 in this matter on the following grounds:

1. In its Decision, the Arizona Corporation Commission has approved a
comprehensive settlement among various parties to resolve numerous issues, including stranded
costs and unbundled tariffs. A major component of the Settlement Agreement is an annual rate
reduction of 1.5% a year for the next five years. The Commission approved these rate reductions
without any financial examination of the revenues, expenses or financial condition of Arizona
Public Service Company. There is no basis upon which the Commission could conclude that the
approved rates are just and reasonable. As a result, the Commission's approval of the

1 comprehensive rate changes that are required by the Settlement Agreement violate the
2 Commission's constitutional duty to establish just and reasonable rates as prescribed in Article
3 15, section 3 of the Arizona Constitution.

4 2. The Commission's approval of the Settlement Agreement and the rate changes
5 contained therein violate Article 15, section 14 of the Arizona Constitution because the rates
6 established by the Commission are not based on the fair value of APS's property. Instead, the
7 Commission simply accepted the Settlement Agreement presented by the parties and the rates
8 that were proposed in the Agreement. It was only after submission of the Settlement Agreement
9 that a number representing the fair value of APS's property was even contrived by APS and
10 accepted without review or examination by the Commission. The rates contained in the
11 Settlement Agreement are not, and could not have been, based on the fair value of APS's
12 property.
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14 3. Section 2.8 of the Settlement Agreement prohibits the Commission from changing
15 rates until July 1, 2004 absent an emergency or a change in laws or regulatory requirements. The
16 provision is unlawful because it prevents the Commission from performing its statutory and
17 constitutional duties including the duty to prescribe rates that are just and reasonable under the
18 Arizona Constitution and A.R.S. § 40-246.

19 4. The Commission lacks the authority to approve an adjustment clause without
20 conducting any kind of financial examination of APS, or its revenues and expenses. While the
21 form of the adjustment clause will be determined in the rate case yet to be filed by APS pursuant
22 to the terms of the Settlement Agreement, the Commission's approval of the Agreement requires
23 it to establish such a mechanism. Whether there is a need for such a mechanism at that time
24 cannot be determined without an examination of APS's financial condition and the costs that are
25

1 proposed for treatment by the mechanism. By requiring the establishment of such a mechanism
2 without a financial examination, the Commission's approval violates its constitutional duty to
3 prescribe rates that are just and reasonable and its duty to base those rates upon the fair value of
4 the utility's property. Additionally, there is no evidence in the record to support the need for
5 such a mechanism in the future. Finally, this Commission cannot bind or commit future
6 Commissions to establish an adjustment mechanism without any consideration of whether the
7 resulting rates will be just and reasonable.

8
9 5. The Commission's approval of APS's transfer to an affiliate of its competitive
10 electric service assets is unjust and unreasonable without a corresponding change to APS's rate
11 base at the time of the transfer. According to the terms of the Settlement Agreement the transfer
12 is to occur no later than December 31, 2002. However, according to Jack Davis, the transfer
13 could occur immediately but as a practical matter will not likely occur until various operating
14 permits and licenses have been transferred.

15 There was testimony to the effect that the book value of the competitive electric service
16 assets that will be transferred is approximately \$2.1 billion. That represents the majority of
17 APS's rate base upon which APS customers are currently paying a return. APS customers will
18 continue to pay a return on all APS assets until the rate base is adjusted in the next rate case.
19 Between the time of the asset transfer to an affiliate and the date when new rates become
20 effective after the next rate case, customers will be paying a return on assets that are no longer
21 owned by APS.

22
23 To similar effect, the Settlement Agreement and the Commission's approval require APS
24 customers to pay \$350 million in stranded costs to APS. However, as APS witnesses Davis and
25 Robinson testified, the book value of APS's assets already includes the total \$533 million in

1 stranded costs claimed by APS. Under the terms of the Settlement Agreement, APS customers
2 will continue to pay a return on the full amount of those stranded costs despite the fact that they
3 are being reduced during the term of the Agreement. No change was made to APS's rate base to
4 reflect that fact. Therefore, the rates approved by the Commission in this Decision are unjust and
5 unreasonable.

6 6. The Commission's Decision does not contain a finding that the rates approved by
7 the Commission as part of the Settlement Agreement are just and reasonable. The Commission
8 lacks the authority to approve new rates without finding that they are just and reasonable.
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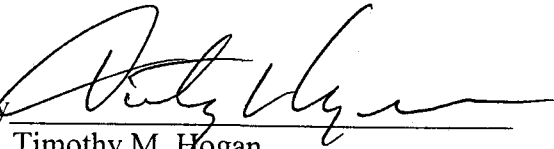
10 7. By its approval of the Agreement, and pursuant to Section 6.1, the Commission
11 has become a party to the Agreement. Pursuant to Section 6.2, the Commission is prohibited
12 from taking or proposing any action which would be inconsistent with the provisions of the
13 Agreement. The Commission lacks the authority to make such an agreement. Moreover, such
14 an agreement violates the Commission's constitutional duty in Article 15, section 3 of the
15 Arizona Constitution. The Commission's agreement to become a party to the Settlement
16 Agreement is also contrary to public policy and therefore void.

17 8. There is no evidence to support Finding of Fact No. 23, 27, 28, 32 or 33 in
18 Decision No. 61973.

19 9. Conclusion of Law No. 4 in Decision No. 61973 is erroneous and unlawful.
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1 RESPECTFULLY SUBMITTED this 26th day of October, 1999.

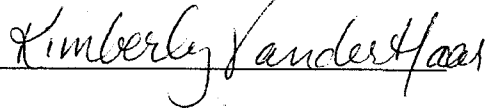
2 ARIZONA CENTER FOR LAW IN THE
3 PUBLIC INTEREST

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5 By 

6 Timothy M. Hogan
7 202 E. McDowell Rd., Suite 153
8 Phoenix, AZ 85004
9 Attorneys for Arizona Consumers Council

10 COPY of the foregoing
11 mailed this 26th day of
12 October, 1999, to:

13 Distribution list for:
14 Docket Nos. E-01933A-98-0471
15 E-0193A-97-0772
16 RE-00000C-94-0165

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